

**MEMORANDUM OF UNDERSTANDING
REGARDING THE DEVELOPMENT OF A
NEW PASSENGER TRAIN STATION
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
THE CITY OF WEST WENDOVER, NEVADA**

February 2015. THIS MEMORANDUM OF UNDERSTANDING ("MOU") is executed this 11th day of ~~December, 2014~~, by National Railroad Passenger Corporation, a corporation organized under Part C of Subtitle V of Title 49 United States Code (formerly the Rail Passenger Service Act) and the laws of the District of Columbia, with its principal offices located at 60 Massachusetts Avenue, N.E., Washington, DC, 20002 ("Amtrak") and the City of West Wendover, a municipal corporation with its principal offices located at 1111 N. Gene L. Jones Way, West Wendover, Nevada 89883 (the "City") (hereinafter collectively referred to as the "Parties"). This MOU outlines certain non-binding discussions between Amtrak and City relating to general terms and conditions under which a New Station (as defined below), a New Platform (as defined below) and certain related facilities (such as parking facilities) would be constructed and maintained by City for use by Amtrak in connection with Amtrak's provision of intercity rail passenger service. The following paragraphs reflect discussions between the Parties, but are not to constitute a complete statement of, nor a legally binding or enforceable agreement or commitment on the part of Amtrak or City with respect to the matters described therein or to impose on either Amtrak or City an enforceable duty or obligation to conclude any such agreement or commitment.

BACKGROUND

WHEREAS, Amtrak operates intercity passenger rail service known as the California Zephyr service in the State of Nevada over railroad tracks owned and maintained by Union Pacific Railroad Company ("UP"); and

WHEREAS, City and Amtrak are exploring the feasibility of commencing Amtrak intercity passenger rail service at the New Station.

WHEREAS, City desires to construct a new Amtrak station in West Wendover, NV, partially on property owned by City and partially on property to be leased by City from UP ("New Station"), a new passenger platform, suitable for passenger loading and unloading, at the New Station ("New Platform") on property owned by UP, and certain related facilities (including, but not limited to, parking facilities) for the non-exclusive use of Amtrak passengers and employees, all along UP's right of way (the construction of the New Station, the New Platform and the related facilities are collectively referred to herein as the "Project"); and

WHEREAS, the New Station is understood to include for Amtrak's use, waiting area(s), restrooms, storage, lighting, signage, IT infrastructure, and accessible pedestrian and vehicle path(s) between the station and ancillary facilities (e.g. bus depot, parking garage);

NOW, THEREFORE, based on the recitals set forth above (which are incorporated herein), the Parties intend to discuss and make agreements in the future where appropriate and necessary for the following:

1. **Activities to be Undertaken by City.** City shall be responsible, at its sole cost and expense, for the following activities:
 - (a) Reach a written agreement with UP that permits City to occupy and use UP's real property needed for the New Station and New Platform. City shall ensure that any real property deeds that may be needed for the development, construction, or use of the New Station and New Platform will reflect Amtrak's statutory rights under Section 24308 of Title 49 U.S. Code to use the property so long as Amtrak or its successor provides intercity rail service, without regard to any temporary break(s) in service, and that such rights run with the land;
 - (b) Reach a written agreement with Amtrak regarding Amtrak's use of the New Station, New Platform and related facilities for Amtrak intercity passenger rail service that, among other things, ensures Amtrak's use of the New Station and New Station Facility so long as Amtrak or its successor provides intercity rail service, without regard to any temporary break(s) in service, prior to the design of the Project. If Amtrak is required to lease the New Station or New Platform, City understands that Amtrak will lease the New Station and/or New Platform pursuant to a lease acceptable to Amtrak that the annual rental payment will not exceed One Dollar (\$1.00). It is anticipated that the City will maintain the New Station, New Platform and related facilities at no expense to Amtrak;
 - (c) In the event UP is the owner of the New Platform and requires Amtrak to lease the New Platform, reach a written agreement with Amtrak (as sublease) in order to afford City access to the New Platform so that City can operate and maintain the New Platform;
 - (d) Design and construction of the Project. Ensure that the New Station, New Platform, any station-related facility, and any temporary station or facility that is provided as an accommodation for any reason to Amtrak, are designed and constructed in compliance with all applicable laws, rules and regulations, including, but not limited to the Americans with Disabilities Act ("ADA"); Amtrak's standards and specifications for stations and passenger platforms; and UP's standards and specifications for passenger platforms in or adjacent to its right of way;
 - (e) Design and construct a parking area for use by station patrons in compliance with all applicable laws, rules and regulations, including, but not limited to the ADA;
 - (f) Obtain Amtrak's prior written approval of the Project design plans and specifications;
 - (g) Coordinate design and construction of the Project with any impacted freight railroad(s), including UP, including any required contractor safety training, engineering design reviews, protective services, such as flagging and track outages;

- (h) Reach written agreements with any impacted freight railroad(s) such as the UP as may be required for the design and construction of the Project, including, but not limited to, preliminary engineering, construction and contractor right of entry agreements;
 - (i) Ensure that all work arising out of or connected with the Project is closely and safely integrated with Amtrak's, UP's and any other affected freight railroads' operations so as not to impede or interfere with said safe operations;
 - (j) Coordinate Project activities with Amtrak and UP throughout the Project; and
 - (k) Secure and pay for all permits, fees, licenses, easements, approvals, or inspections which may be required in connection with the Project.
2. **Services to be Performed by Amtrak.** It is anticipated that Amtrak will perform (or have performed by UP or other third parties), at City's sole cost and expense and subject to the negotiation and execution of a separate agreement, the following services as may be necessary:
- (a) Review CITY's plans, drawings and specifications for impact on Amtrak's operations and consistency with Amtrak's guidelines and standards for station and platform facilities;
 - (b) Provide assistance to CITY in its efforts to obtain Federal Railroad Administration ("FRA"), Federal Transportation Administration ("FTA") and approvals from any impacted freight railroads such as the HOST, including providing supportive documentation; and
 - (c) Provide such additional services as may be agreed upon by the Parties.
3. **Funding.** City will fund the entire cost of the Project. Amtrak shall not be liable, responsible for, or expected to provide any funding for the Project or for future ongoing maintenance, repairs and operating costs (including, but not limited to the cost of a caretaker) and future capital costs. Prior to the start of design activities, City shall provide Amtrak with evidence that City has obtained full funding for the Project and with either a written commitment from RFPS or copies of agreements with third parties that future ongoing maintenance, repairs and operating costs (including, but not limited to the cost of a caretaker) and future capital costs will be funded by such third parties.
4. **Reimbursement of Amtrak's and UP's Costs.** Subject to the execution of a separate agreement as contemplated in Section 2 herein, City agrees to reimburse Amtrak for all costs incurred by Amtrak (including all costs incurred by UP or other third parties providing the services set forth in Section 2 hereof) in connection with the Project. Amtrak's fully allocated overhead additives will be applied to all such costs.
5. **Definitive Agreement.** The parties acknowledge that the above described terms have been identified as the principal terms for the planning and construction of the Project. In

order for the activities described in Section 1 hereof and the services described in Section 2 hereof to proceed, the parties acknowledge that certain definitive agreements will need to be entered into by the parties and by City and various third parties, which definitive agreements shall conform to the provisions set forth herein and provide such other terms as are consistent with and customary for a transaction of this type.

6. **Risk of Liability.**

To the extent of NRS Chapter 41 of the Nevada Revised Statutes and subject to the express limitations of same regarding liability limitations, City acknowledges that City will be required to defend, indemnify and hold harmless Amtrak, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties") and UP, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any of the Indemnified Parties or UP (and its officers, directors, employees, agents, servants, successors, assigns and subsidiaries) may hereafter incur, be responsible for, or pay as a result of:

- (i) injury, death, disease, or occupational disease to any person, or
- (ii) damage (including environmental contamination and loss of use) to or loss of any real or personal property used or effected in the construction of the Project and, later, the operation of the station and any other property of Amtrak or UP arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Amtrak, UP, City and/or their officers, employees, agents, servants, contractors, subcontractors or any other person acting for or by permission of them.

Except to the extent of NRS Chapter 41 of the Nevada Revised Statutes and subject to the express limitations of same regarding liability limitations, the foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for City or any contractor, subcontractor or consultant.

7. **Insurance.**

(a) **During Design and Construction.** Prior to the date when design and construction of the Project begins, City acknowledges that City will require those contractors and subcontractors who perform design, construction or other activities in connection with the Project are required to obtain and maintain the types of insurance specified in **Attachment A**. In the event City performs design, construction or project management activities in connection with the Project, City will be required to obtain and maintain the types of insurance specified in **Attachment A**.

(b) **Following Construction.** City will provide the following insurance at such time as the Project is ready to be placed into service and Amtrak service to the New Station is ready to begin (Station Operations) and maintain this insurance until such time as Amtrak ceases to use the New Station. Except for the insurance which is required in Paragraph 7(b)(4), below, the City shall maintain its insurance through Nevada Public Agency Insurance Pool (NPAIP).

- (1) **Workers' Compensation Insurance.** A policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, covering all employees of City. Employer's Liability coverage with limits of liability of not less than One Million Dollars (\$1,000,000) each occurrence, accident or illness shall be included.
- (2) **Commercial General Liability Insurance.** A policy issued to and covering liability imposed upon City arising out of the Station Operations, and all obligations assumed by City, with respect to Station Operations. Products/completed operations liability, independent contractor's liability, contractual liability, personal injury liability and advertising liability coverages are to be included, National Railroad Passenger Corporation, and all other commuter agencies and railroads that operate over the property or tracks at issue, are to be named as an additional insureds with respect to Station Operations, Coverage under this policy shall have a combined single limit of liability of not less than Two Million Dollars (\$2,000,000) per occurrence.
- (3) **Automobile Liability Insurance.** A policy issued to and covering the liability of City arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated Coverage under this policy shall have a combined single limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence.
- (4) **Railroad Protective Liability (RRP) Insurance** covering the station operations performed by City, its contractor, subcontractor or agent within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of National Railroad Passenger Corporation (and as appropriate all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than Two Million Dollars (\$2,000,000.00) each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A Six Million Dollar (\$6,000,000.00) annual aggregate shall apply. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of Project.

- (5) **All-Risk Property Insurance.** A policy issued to and covering City's interest in all property having any connection to the Project and Station Operations. The insurance shall provide coverage on risks of direct physical loss or damage, and shall have limits adequate to cover the full replacement value of the property.

City will require all contractors, subcontractors or agents engaged by City to operate and/or maintain the station building, parking area or platform to obtain and maintain the types of insurance set forth in **Attachment B.**

- 8. **Forum.** Each Party agrees that all legal proceedings in connection with any dispute arising under or relating to this MOU or any of the definitive agreements to which Amtrak is a party shall be brought in the United States District Court. Each party hereby accepts the jurisdiction of the United States District Court.
- 9. **Non-Binding Effect.** City and Amtrak confirm their full and complete understanding that, notwithstanding anything herein to the contrary: (a) this MOU is an expression of the Parties' present mutual intent regarding the proposed transaction, (b) this MOU does not constitute a complete statement of the intended structure of the transaction, all essential terms for such transaction, or a legally binding and enforceable agreement between Amtrak and City, (c) this MOU does not obligate either party to enter into any Definitive Agreements, and (d) neither party will (i) be bound by any written or oral representations or negotiations between them, either directly or through any intermediary, (ii) have any liability hereunder for refusing to compromise on any issue, or terminating negotiations at any time for any reason or no reason, (iii) be bound unless and until (and then only to the extent) a mutually satisfactory definitive agreement(s) has/have been negotiated, prepared, approved, executed and delivered, and (iv) have any liability hereunder or bring suit against the other in connection with the terms of this MOU. In addition, this MOU will not give rise to any claim based on promissory estoppel, partial performance, detrimental reliance or any other equitable theory.

NATIONAL RAILROAD PASSENGER CORPORATION	CITY OF WEST WENDOVER
By: <u>B. Poodolian</u>	By: <u>Emily Carter</u>
Name: <u>SR DIRECTOR</u>	Name: <u>Emily Carter</u>
Title: <u>BRUCE LOOLIAN</u>	Title: <u>Mayor</u>

ATTACHMENT A
INSURANCE REQUIREMENTS
For West Wendover, NV Design and Construction Project

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Revised as of June 25, 2013

“Contractor” is defined as any design, construction or other contractor or subcontractor the City engages in the Project.

INSURANCE

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of Project. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within 30 days of Amtrak’s written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Project are to be performed. City shall require all Contractors to carry the insurance required herein or City may, at its option, provide the coverage for any or all Contractors, provided the evidence of insurance submitted by City to Amtrak so stipulates. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until the Project is satisfactorily completed (unless otherwise noted below), all Contractor personnel and equipment have been removed from the Project, and any work has been formally accepted. Contractor may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that Contractor shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

1. **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Project will be performed, covering all employees of Contractor and its contractors, subcontractors or agents. Employer's Liability coverage with limits of not less than \$1 million each accident or illness shall be included.
2. **Commercial General Liability (CGL) Insurance** covering liability of Contractor and the City with respect to the Project to be performed and all obligations assumed by Contractor and the City under the terms of the agreements. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and no exclusions for Explosion/Collapse/ Underground (X-C-U) applicable or added.

The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the Project to be performed. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insureds may carry.

Coverage under this policy shall have limits of liability of not less than **\$10** million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.

3. **Automobile Liability Insurance** covering the liability of Contractor and the City arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's CGL insurance. The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the Project to be performed. Coverage under this policy shall have limits of liability of not less than **\$2** million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

In the event Contractor or any subcontractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to **\$5** million each occurrence.

4. **Railroad Protective Liability (RRP) Insurance** covering the Project performed by Contractor or any subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of National Railroad Passenger Corporation (and as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than **\$5** million each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A **\$10** million annual aggregate shall apply. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of Project.

5. **Builders' Risk Insurance**. A policy issued to City, the owner of the New Station, the owner of the New Platform, or City' design and construction contractors and covering City', the New Station owner's, the New Platform owner's, City' design and construction contractors' and Amtrak's interest in the work. Coverage shall be on an all-risk, completed value basis, including business interruption (time element) coverage with a extended period of indemnity of at least one hundred and eighty (180) days, labor and materials in place, on site, in storage, off-site or in transit. National Railroad Passenger Corporation shall be named as loss payee, as respects its interest in the covered property. Further the policy shall contain a waiver of subrogation against National Railroad Passenger Corporation, its employees and agents. If City, the owner of the New Station, the owner of the New Platform, or City' design and construction contractors carry (carries) a blanket policy for this exposure, the work shall be excluded by endorsement so there will be no duplication of costs for coverage. Amtrak reserves the right, in its sole discretion to place the Builder's Risk Insurance covering the work that is in compliance with the requirements of this Section.

6. **Contractors All-Risk Property Insurance.** A policy issued to the Contractor and any subcontractors in all property of the Contractor and any subcontractors. The insurance shall provide coverage on risks of direct physical loss or damage and shall have limits adequate to cover the full replacement value of the property.
7. **Contractor's Pollution Liability Insurance** covering the liability of Contractor and the City arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the Project of Contractor, with National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence. The coverage shall be maintained during the term of the project, and for at least two (2) years following Amtrak's acceptance of the completion of all Project to be performed.
8. **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor, its subcontractor or transporter, as well as the disposal site operator, shall maintain this insurance. Contractor shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than \$2 million per claim.

Further, any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Contractor.

9. **Professional Liability Insurance** covering the liability of Contractor for any and all errors or omissions committed by Contractor in the performance of the Project, regardless of the type of damages. The coverage shall be maintained during the term of the Project, and for at least three (3) years following completion thereof. The policy shall have a retroactive date that precedes any design work on the project and shall have limits of liability of not less than \$2 million per claim and \$2 million in the annual aggregate.

If Contractor is not performing professional design or engineering services, Contractor may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

10. **Waiver of Subrogation** Contractor waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak and, as appropriate, CUSCO and WTC, and their agents, officers, directors, and employees.
11. **Punitive Damages** Unless prohibited by law, no liability insurance policies required above shall contain an exclusion for punitive or exemplary damages.
12. **Claims-Made Insurance** If any liability insurance specified above shall be provided on a claims-made basis then, in addition to coverage requirements above, such policy shall provide that:
 - a. The retroactive date shall coincide with or precede Contractor's start of Project (including subsequent policies purchased as renewals or replacements);
 - b. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;

- c. Contractor will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., CGL, Professional Liability) for at least three (3) years following completion of the Project; and
 - d. If insurance is terminated for any reason, Contractor will purchase an extended reporting provision of at least six (6) years to report claims arising from Project.
13. **Evidence of Insurance** Contractor shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing Project. Prior to the cancellation, renewal, or expiration of any insurance policy specified above, Contractor shall furnish evidence of insurance replacing the cancelled or expired policies. THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING. The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Contractor begin Project without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Director I&C Projects
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817

ATTACHMENT B
INSURANCE REQUIREMENTS
For West Wendover, NV Post Design and Construction
if City Uses Contractors to Maintain and Operate

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Revised as of June 25, 2013

“Contractor” is defined as any design, construction or other contractor or subcontractor the City engages to perform work at the New Station and/or the New Platform.

INSURANCE

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of Project. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within 30 days of Amtrak’s written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Project are to be performed. City shall require all Contractors to carry the insurance required herein or City may, at its option, provide the coverage for any or all Contractors, provided the evidence of insurance submitted by City to Amtrak so stipulates. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until the Project is satisfactorily completed (unless otherwise noted below), all Contractor personnel and equipment have been removed from the Project, and any work has been formally accepted. Contractor may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that Contractor shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

1. **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Project will be performed, covering all employees of Contractor and its contractors, subcontractors or agents. Employer's Liability coverage with limits of not less than \$1 million each accident or illness shall be included.

In the event the Project are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and Outer Continental Lands Act Endorsement are required.

2. **Commercial General Liability (CGL) Insurance** covering liability of Contractor and the City with respect to the Project to be performed and all obligations assumed by Contractor and the City under the terms of the agreements. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and no exclusions for Explosion/Collapse/ Underground (X-C-U) applicable or added.

The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as

additional insureds with respect to the Project to be performed. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insureds may carry.

Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.

3. **Automobile Liability Insurance** covering the liability of Contractor and the City arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's CGL insurance. The policy shall name National Railroad Passenger Corporation and, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the Project to be performed. Coverage under this policy shall have limits of liability of not less than \$1 million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

In the event Contractor or any subcontractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to \$5 million each occurrence.

4. **Railroad Protective Liability (RRP) Insurance** covering the Project performed by Contractor or any subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of National Railroad Passenger Corporation (and as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than \$2 million each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A \$6 million annual aggregate shall apply. Additionally, Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of Project.

5. **Punitive Damages** Unless prohibited by law, no liability insurance policies required above shall contain an exclusion for punitive or exemplary damages.
6. **Claims-Made Insurance** If any liability insurance specified above shall be provided on a claims-made basis then, in addition to coverage requirements above, such policy shall provide that:
 - a. The retroactive date shall coincide with or precede Contractor's start of Project (including subsequent policies purchased as renewals or replacements);

- b. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;
 - c. Contractor will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., CGL, Professional Liability) for at least three (3) years following completion of the Project; and
 - d. If insurance is terminated for any reason, Contractor will purchase an extended reporting provision of at least six (6) years to report claims arising from Project.
7. **Evidence of Insurance** Contractor shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing Project. Prior to the cancellation, renewal, or expiration of any insurance policy specified above, Contractor shall furnish evidence of insurance replacing the cancelled or expired policies. THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING. The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Contractor begin Project without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Director I&C Projects
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817